

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BOARD OF TRUSTEES OF THE
MICHIGAN LABORERS' PENSION
FUND,

Plaintiff,

Case No. 2:14-cv-14142

v.

U.S. District Judge Matthew F. Leitman
U.S. Magistrate Judge Mona K. Majzoub

RITE WAY FENCE, INC., a Michigan
corporation, MARX CONTRACTING, INC.
a Michigan corporation, H & H RENTALS,
L.L.C., a Michigan limited liability company,
and EUGENE M. ZAPCZYNSKI, an individual,
jointly and severally,

Defendants.

**PLAINTIFF'S MOTION FOR LEAVE
TO FILE A SUPPLEMENT TO MOTION TO COMPEL (DKT. 27)**

BRIEF IN SUPPORT

CERTIFICATE OF SERVICE

Christopher P. Legghio (P27378)
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Attorneys for Plaintiff

January 27, 2016

**PLAINTIFF'S MOTION FOR LEAVE
TO FILE A SUPPLEMENT TO MOTION TO COMPEL (DKT. 27)**

Plaintiff moves for leave to file the supplement (Ex. 1) in support of its motion to compel (Dkt. 27) currently pending before the Magistrate Judge:

1. On November 30, 2015, Plaintiff filed a motion seeking an Order (a) compelling the production of documents sought in Plaintiff's June 1, 2015 document request, (b) compelling Fed. R. Civ. P. 30(b)(6) depositions, (c) for all other relief deemed appropriate including Rule 37 sanctions which is pending before the Magistrate.

2. Plaintiff seeks leave to file the supplement attached as Ex. 1 to update the Court and, in particular, report on the events of January 8, 2016, *i.e.*, when Defendants (a) presented ostensible Rule 30(b)(6) witnesses who were unprepared, and (b) failed to produce many requested documents. Time is of the essence: barely over one month remains on discovery (discovery cut-off is March 8, 2016) and Defendants still have not produced many important documents requested over seven months ago.

3. As shown in the proposed supplement, Plaintiff asks the Court to convene a hearing or telephone conference at the earliest opportunity and (a) order Defendants to immediately produce all unproduced documents encompassed by Plaintiff's June 1, 2015 request, (b) compel the appearance of Rule 30(b)(6)

witnesses, and (c) grant such other relief, including fees and sanctions, as the Court finds warranted.

4. On January 25, 2016, Plaintiff's counsel sought concurrence from Defendants' counsel on the relief requested in this motion, but did not obtain such concurrence. So, this motion is necessary.

For the reasons above, Plaintiff asks that this Court allow it to file the supplemental brief attached as Ex. 1.

/s/ Michael J. Bommarito
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Dated: January 27, 2016

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE
TO FILE A SUPPLEMENT TO MOTION TO COMPEL (DKT. 27) TO
ADDRESS DEFENDANTS' ONGOING DISCOVERY VIOLATIONS**

LOCAL RULE 7.1 STATEMENT OF ISSUE

Whether this Court should permit Plaintiff to file a supplement to its motion to compel to update the Court with regard to the events of January 8, 2016 when Defendants failed to produce prepared Fed. R. Civ. P. 30(b)(6) witnesses and many important documents.

LOCAL RULE 7.1 STATEMENT OF APPROPRIATE AUTHORITY

U.S. v Whitehouse, 922 F. Supp. 1 (ED Mich 1996) (granting defendant leave to file a supplemental brief).

ARGUMENT

In support of its motion, Plaintiff relies upon the Court's authority to permit the supplement, and upon the statements made in the motion and the proposed supplement attached as Ex. 1.

/s/ Michael J. Bommarito

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Attorneys for Plaintiff

Dated: January 27, 2016

CERTIFICATE OF SERVICE

Dennis R. Flynn says that on January 27, 2016, he efiled Plaintiff's Motion, Brief and Exhibit and this certificate of service in the foregoing matter through the CM/ECF system which will send notice to the attorneys of record.

/s/ *Dennis R. Flynn*

Dennis R. Flynn